



General Assembly

February Session, 2010

Amendment

LCO No. 4778

HB0534804778HDO

Offered by:

REP. MUSHINSKY, 85th Dist.

To: Subst. House Bill No. 5348

File No. 490

Cal. No. 292

**"AN ACT IMPLEMENTING ADDITIONAL RECOMMENDATIONS OF
THE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
CONCERNING RETALIATION FOR WHISTLEBLOWER
COMPLAINTS."**

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 4-61dd of the 2010 supplement to the general
4 statutes is repealed and the following is substituted in lieu thereof
5 (*Effective October 1, 2010*):

6 (a) Any person having knowledge of any matter involving
7 corruption, unethical practices, violation of state laws or regulations,
8 mismanagement, gross waste of funds, abuse of authority or danger to
9 the public safety occurring in any state department or agency or any
10 quasi-public agency, as defined in section 1-120, or any person having
11 knowledge of any matter involving corruption, violation of state or
12 federal laws or regulations, gross waste of funds, abuse of authority or
13 danger to the public safety occurring in any large state contract, may

14 transmit all facts and information in such person's possession
15 concerning such matter to the Auditors of Public Accounts. [The
16 Auditors of Public Accounts shall review such matter and report their
17 findings and any recommendations to the Attorney General. Upon
18 receiving such a report, the Attorney General shall make such
19 investigation as the Attorney General deems proper regarding such
20 report and any other information that may be reasonably derived from
21 such report. Prior to conducting an investigation of any information
22 that may be reasonably derived from such report, the Attorney
23 General shall consult with the Auditors of Public Accounts concerning
24 the relationship of such additional information to the report that has
25 been issued pursuant to this subsection. Any such subsequent
26 investigation deemed appropriate by the Attorney General shall only
27 be conducted with the concurrence and assistance of the Auditors of
28 Public Accounts. At the request of the Attorney General or on their
29 own initiative, the auditors shall assist in the investigation.] The
30 Auditors of Public Accounts or Attorney General shall investigate such
31 matter.

32 (b) The Auditors of Public Accounts and the Attorney General shall
33 enter into a memorandum of understanding in order to develop a
34 system for jointly managing complaints received pursuant to
35 subsection (a) of this section and the assignment of such complaints
36 appropriately. The Auditors of Public Accounts or the Attorney
37 General may reject any such complaint if either the Auditors of Public
38 Accounts or the Attorney General determines one or more of the
39 following:

40 (1) There are other available remedies that the complainant can
41 reasonably be expected to pursue;

42 (2) The matter complained of is better suited for investigation or
43 enforcement by another state agency;

44 (3) The complaint is trivial, frivolous, vexatious or not made in good
45 faith;

46 (4) Other complaints have greater priority in terms of serving the
47 public good;

48 (5) Investigation into the complaint would require resources that
49 either the Auditors of Public Accounts or the Attorney General lack; or

50 (6) The complaint is not timely or too long delayed to justify further
51 investigation.

52 (c) If at any time the Auditors of Public Accounts or the Attorney
53 General determines that a complaint is more appropriately
54 investigated by another state agency, the Auditors of Public Accounts
55 or the Attorney General shall refer the complaint to such agency. The
56 Attorney General [shall have power to] may summon witnesses,
57 require the production of any necessary books, papers or other
58 documents and administer oaths to witnesses, where necessary, for the
59 purpose of an investigation pursuant to this section or for the purpose
60 of investigating a suspected violation of subsection (a) of section 17b-
61 301b until such time as the Attorney General files a civil action
62 pursuant to section 17b-301c. Upon the conclusion of the investigation,
63 the Attorney General shall where necessary, report any findings to the
64 Governor, or in matters involving criminal activity, to the Chief State's
65 Attorney. In addition to the exempt records provision of section 1-210,
66 the Auditors of Public Accounts and the Attorney General shall not,
67 after receipt of any information from a person under the provisions of
68 this section or sections 17b-301c to 17b-301g, inclusive, disclose the
69 identity of such person without such person's consent unless the
70 Auditors of Public Accounts or the Attorney General determines that
71 such disclosure is unavoidable, and may withhold records of such
72 investigation, during the pendency of the investigation.

73 (d) (1) Upon the request of the person who makes a complaint in
74 accordance with subsection (a) of this section, the Auditors of Public
75 Accounts or the Attorney General shall inform such person of the
76 outcome of the investigation of such complaint. If, at the conclusion of
77 an investigation, the Auditors of Public Accounts or the Attorney

78 General find such matter to be substantiated and require corrective
79 action on the part of the state agency, quasi-public agency or large
80 state contractor, the Auditors of Public Accounts and the Attorney
81 General, not later than a year after requiring such action, shall
82 determine whether such corrective action has been taken. If they
83 determine that the state agency, quasi-public agency or large state
84 contractor has not taken such corrective action, they shall report such
85 noncompliance to the Governor.

86 (2) The Auditors of Public Accounts and the Attorney General shall
87 each post on their agency Internet web sites a summary of all matters
88 investigated by their agencies. Such summary shall include, but not be
89 limited to, the number of complaints for each state agency, quasi-
90 public agency or large state contractor, a description of the type of
91 allegations made, the date each such matter was referred to the
92 auditors or Attorney General and the status and disposition of each
93 such matter, including whether the allegation has been substantiated
94 in whole or in part and whether the agency or large state contractor
95 has attempted to take any corrective action. Such summary shall be
96 updated every six months.

97 [(b)] (e) (1) No state officer or employee, as defined in section 4-141,
98 no quasi-public agency officer or employee, no officer or employee of a
99 large state contractor and no appointing authority shall take or
100 threaten to take any personnel action against any state or quasi-public
101 agency employee or any employee of a large state contractor in
102 retaliation for (A) such employee's [or contractor's] disclosure of
103 information to [(A)] (i) an employee of the Auditors of Public Accounts
104 or the Attorney General under the provisions of subsection (a) of this
105 section; [(B)] (ii) an employee of the state agency or quasi-public
106 agency where such state officer or employee is employed; [(C)] (iii) an
107 employee of a state agency pursuant to a mandated reporter statute or
108 pursuant to subsection (b) of section 17a-28; or [(D)] (iv) in the case of a
109 large state contractor, an employee of the contracting state agency
110 concerning information involving the large state contract; or (B) such
111 employee's testimony or assistance in any proceeding under this

112 section.

113 [(2) If a state or quasi-public agency employee or an employee of a
114 large state contractor alleges that a personnel action has been
115 threatened or taken in violation of subdivision (1) of this subsection,
116 the employee may notify the Attorney General, who shall investigate
117 pursuant to subsection (a) of this section.]

118 [(3)] (2) (A) Not later than [thirty] ninety days after learning of the
119 specific incident giving rise to a claim that a personnel action has been
120 threatened or has occurred in violation of subdivision (1) of this
121 subsection, a state or quasi-public agency employee, an employee of a
122 large state contractor or the employee's attorney may file a complaint
123 against the state agency, quasi-public agency, large state contractor or
124 appointing authority concerning such personnel action with the Chief
125 Human Rights Referee designated under section 46a-57. Such
126 complaint may be amended if an additional incident giving rise to a
127 claim under this subdivision occurs subsequent to the filing of the
128 original complaint. The Chief Human Rights Referee shall assign the
129 complaint to a human rights referee appointed under section 46a-57,
130 who shall conduct a hearing and issue a decision concerning whether
131 the officer or employee taking or threatening to take the personnel
132 action violated any provision of this section. [If] The human rights
133 referee may order a state agency or quasi-public agency to produce (i)
134 an employee of such agency or quasi-public agency to testify as a
135 witness in any proceeding under this subdivision, or (ii) books, papers
136 or other documents relevant to the complaint, without issuing a
137 subpoena. If such agency or quasi-public agency fails to produce such
138 witness, books, papers or documents, not later than thirty days after
139 issuing such order, the human rights referee may consider such failure
140 as supporting evidence for the complainant. If, during the pendency of
141 the hearing, the human rights referee has reasonable cause to believe
142 that any officer or employee has taken personnel action in violation of
143 subdivision (1) of this subsection, such referee may order temporary
144 equitable relief, including, but not limited to, an order reinstating the
145 person filing the complaint to the same position held before such

146 personnel action was taken. If, after the hearing, the human rights
147 referee finds [such] a violation, the referee may award the aggrieved
148 employee reinstatement to the employee's former position, back pay
149 and reestablishment of any employee benefits for which the employee
150 would otherwise have been eligible if such violation had not occurred,
151 reasonable attorneys' fees, and any other damages. For the purposes of
152 this subsection, such human rights referee shall act as an independent
153 hearing officer. The decision of a human rights referee under this
154 subsection may be appealed by any person who was a party at such
155 hearing, in accordance with the provisions of section 4-183.

156 (B) The Chief Human Rights Referee shall adopt regulations, in
157 accordance with the provisions of chapter 54, establishing the
158 procedure for filing complaints and noticing and conducting hearings
159 under subparagraph (A) of this subdivision.

160 [(4) As an alternative to the provisions of subdivisions] (3) Any state
161 or quasi-public agency employee or large state contractor employee
162 who has not pursued a remedy under subdivision (2) [and (3)] of this
163 subsection may, in the case of: (A) A state or quasi-public agency
164 employee who alleges that a personnel action has been threatened or
165 taken, [may] file an appeal not later than [thirty] ninety days after
166 learning of the specific incident giving rise to such claim with the
167 Employees' Review Board under section 5-202, or, in the case of a state
168 or quasi-public agency employee covered by a collective bargaining
169 contract, in accordance with the procedure provided by such contract;
170 or (B) an employee of a large state contractor alleging that such action
171 has been threatened or taken, [may,] after exhausting all available
172 administrative remedies, bring a civil action in accordance with the
173 provisions of subsection (c) of section 31-51m.

174 [(5)] (4) In any proceeding under subdivision (2) [,] or (3) [or (4)] of
175 this subsection concerning a personnel action taken or threatened
176 against any state or quasi-public agency employee or any employee of
177 a large state contractor, which personnel action occurs not later than
178 [one year] two years after the employee first transmits facts and

179 information concerning a matter under subsection (a) of this section or
180 subdivision (1) of this subsection to the Auditors of Public Accounts,
181 [or] the Attorney General or an employee of a state agency or quasi-
182 public agency, as applicable, there shall be a rebuttable presumption
183 that the personnel action is in retaliation for the action taken by the
184 employee under subsection (a) of this section or subdivision (1) of this
185 subsection.

186 [(6)] (5) If a state officer or employee, as defined in section 4-141, a
187 quasi-public agency officer or employee, an officer or employee of a
188 large state contractor or an appointing authority takes or threatens to
189 take any action to impede, fail to renew or cancel a contract between a
190 state agency and a large state contractor, or between a large state
191 contractor and its subcontractor, in retaliation for the disclosure of
192 information pursuant to subsection (a) of this section or subdivision (1)
193 of this subsection to any agency listed in subdivision (1) of this
194 subsection, such affected agency, contractor or subcontractor may, not
195 later than ninety days after learning of such action, threat or failure to
196 renew, bring a civil action in the superior court for the judicial district
197 of Hartford to recover damages, attorney's fees and costs.

198 [(c)] (f) Any employee of a state or quasi-public agency or large state
199 contractor, who is found by the Auditors of Public Accounts, the
200 Attorney General, a human rights referee or the Employees' Review
201 Board to have knowingly and maliciously made false charges under
202 subsection (a) of this section, shall be subject to disciplinary action by
203 such employee's appointing authority up to and including dismissal.
204 In the case of a state or quasi-public agency employee, such action
205 shall be subject to appeal to the Employees' Review Board in
206 accordance with section 5-202, or in the case of state or quasi-public
207 agency employees included in collective bargaining contracts, the
208 procedure provided by such contracts.

209 [(d)] (g) On or before September first, annually, the Auditors of
210 Public Accounts and the Attorney General shall submit, in accordance
211 with the provisions of section 11-4a, to the clerk of each house of the

212 General Assembly a joint report indicating the number of matters for
213 each agency or large state contractor for which facts and information
214 were transmitted to the auditors pursuant to this section during the
215 preceding state fiscal year, [and the] a description of the type of
216 allegations made, the date each such matter was referred to the
217 auditors and the status and disposition of each such matter, including
218 whether the allegation has been substantiated in whole or in part and
219 whether the agency or large state contractor has attempted to take any
220 corrective action.

221 [(e)] (h) Each contract between a state or quasi-public agency and a
222 large state contractor shall provide that, if an officer, employee or
223 appointing authority of a large state contractor takes or threatens to
224 take any personnel action against any employee of the contractor in
225 retaliation for such employee's disclosure of information to any
226 employee of the contracting state or quasi-public agency or the
227 Auditors of Public Accounts or the Attorney General under the
228 provisions of subsection (a) or subdivision (1) of subsection (b) of this
229 section, the contractor shall be liable for a civil penalty of not more
230 than five thousand dollars for each offense, up to a maximum of
231 twenty per cent of the value of the contract. Each violation shall be a
232 separate and distinct offense and in the case of a continuing violation
233 each calendar day's continuance of the violation shall be deemed to be
234 a separate and distinct offense. The executive head of the state or
235 quasi-public agency may request the Attorney General to bring a civil
236 action in the superior court for the judicial district of Hartford to seek
237 imposition and recovery of such civil penalty.

238 [(f)] (i) Each state agency or quasi-public agency shall post a notice
239 of the provisions of this section relating to state employees and quasi-
240 public agency employees in a conspicuous place that is readily
241 available for viewing by employees of such agency or quasi-public
242 agency. Each large state contractor shall post a notice of the provisions
243 of this section relating to large state contractors in a conspicuous place
244 which is readily available for viewing by the employees of the
245 contractor.

246 [(g)] (j) No person who, in good faith, discloses information [to the
 247 Auditors of Public Accounts or the Attorney General] in accordance
 248 with the provisions of this section shall be liable for any civil damages
 249 resulting from such good faith disclosure.

250 [(h)] (k) As used in this section:

251 (1) "Large state contract" means a contract between an entity and a
 252 state or quasi-public agency, having a value of five million dollars or
 253 more; and

254 (2) "Large state contractor" means an entity that has entered into a
 255 large state contract with a state or quasi-public agency.

256 Sec. 2. (NEW) (*Effective October 1, 2010*) The Comptroller shall post
 257 on the Comptroller's Internet web site a list of the names and
 258 addresses of all large state contractors. The Comptroller shall
 259 periodically update such list. For purposes of this section, "large state
 260 contractor" has the same meaning as in section 4-61dd of the general
 261 statutes, as amended by this act.

262 Sec. 3. Subdivision (13) of subsection (b) of section 1-210 of the 2010
 263 supplement to the general statutes is repealed and the following is
 264 substituted in lieu thereof (*Effective October 1, 2010*):

265 (13) Records of an investigation or the name of an employee
 266 providing information under the provisions of section 4-61dd or
 267 sections 17b-301c to 17b-301g, inclusive, except that the summary
 268 posted in accordance with subsection (d) of section 4-61dd, as
 269 amended by this act, and the report submitted in accordance with
 270 subsection (g) of section 4-61dd, as amended by this act, shall not be
 271 considered records of an investigation for purposes of this
 272 subdivision;"

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2010	4-61dd

Sec. 2	<i>October 1, 2010</i>	New section
Sec. 3	<i>October 1, 2010</i>	1-210(b)(13)